

F.B.I. HEAD TERMED IN POST ILLEGALLY

FEB 24 1973
Proxmire Bids Gray 'Stand
Aside' — Says Law Limits
Temporary Appointments
NYTimes

By JOHN M. CREWDSON
Special to The New York Times

WASHINGTON, Feb. 23—
Senator William Proxmire
charged today that L. Patrick
Gray 3d, acting director of the
Federal Bureau of Investigation,
violated Federal law by
remaining in his post more
than 30 days without Senate
confirmation. He called upon
Mr. Gray "to stand aside at
once."

Senator Proxmire, a Wisconsin Democrat, released the text
of a letter from Controller
General Elmer B. Staats that
concluded that Mr. Gray's con-
tinued service after June 3,
1972, was prohibited. It cited
a statute allowing vacancies in
the executive branch that re-
quire Senate confirmation to be
filled temporarily "for not
more than 30 days."

Mr. Gray was appointed act-
ing head of the bureau
by President Nixon last May 3,
after the death of J. Edgar
Hoover, but his formal nomi-
nation was not announced by
the White House until last Sat-
urday. 17 FEB

Nonpartisan Position

Mr. Nixon said in May that
Mr. Gray would serve in an
acting capacity through the
Presidential election last No-
vember to prevent the nomina-
tion to what is viewed as a
nonpartisan post from becom-
ing a campaign issue.

Mr. Proxmire said today that
he considered Mr. Staats, who
heads the General Accounting
Office, the auditing arm of
Congress, "to be, in my view,
the definitive authority" on the
question. He called on the
President to appoint someone
else to head the bureau while
Mr. Gray's nomination was
under consideration by the Sen-
ate.

Mr. Proxmire emphasized
that he was not criticizing Mr.
Gray, whom he called "a man
of great integrity," but rather
Mr. Nixon for using "the de-
vice of the temporary appoint-
ment to put his man in this job
without Senate approval."

In January, the Justice De-

partment, at Mr. Staats' re-
quest, submitted an opinion in
which it argued that the 1868
law containing the 30-day limit
did not govern Mr. Gray's ap-
pointment.

Contradiction Discerned

But Mr. Staats concluded
that the department's conten-
tion would lead to the contra-
diction that Congress "did not
intend to require Senate con-

REUTERS, FEBRUARY 24, 1973



Associated Press

Senator William Proxmire of Wisconsin during news
session at which he challenged the legality of continued
service of L. Patrick Gray 3d, acting F.B.I. head.

firmation of the new head of
the F.B.I. when it passed a
law in 1968 making Mr. Hoover's
successor subject to con-
firmation.

A Justice Department
spokesman said today that
there was "no question of Pat
Gray stepping down."

Mr. Gray paid courtesy calls
today to some members of the
Senate Judiciary Committee,
which will begin hearings on
his nomination next Wednesday.
Most committee members
said they were reserving judg-
ment on the appointment, but
Robert C. Byrd, Democrat of
West Virginia, the Senate ma-
jority whip, indicated that a
visit from Mr. Gray earlier in
the week failed to dilute his
opposition.

In an interview, Mr. Byrd,
so far the only public critic
of Mr. Gray among the com-
mittee's 16 members, charac-
terized the acting director's
background as one of "strong

partisan activity" and said that he would vote against the appointment rather than "risk politicization" of the bureau.

Speeches Are Cited

Some of Mr. Gray's speeches in the Presidential campaign, Senator Byrd said, "gave the appearance of his being a surrogate" for Mr. Nixon. He also expressed concern about "press reports" that the bureau had supplied the Nixon re-election committee and the White House with information from its investigation of the bugging of the Democrats' headquarters in the Watergate complex.

"I don't think we should run the risk of that agency's becoming the political arm of the White House under any administration or any political party," said Mr. Byrd, who last month introduced a bill to limit the bureau director to a four-year term.

He added that there is little likelihood that any closures before the committee

would persuade him to vote in favor of Mr. Gray, who is expected to be the first witness on Wednesday.

Questions Held Serious

Mr. Byrd stressed that he was "not leading a fight against the Gray nomination, but one committee source said there was "a general feeling" among many of the Democratic members that he had "raised some questions that ought to be answered."

Of the committee's nine Democrats, only Senator James O. Eastland of Mississippi, the chairman, and John L. McClellan of Arkansas are said to be leading toward Mr. Gray.

A number of the seven Republicans share their view, including Roman L. Hruska of Nebraska, the ranking minority member. But an aide to Mr. Hruska said that both sides could be expected to have some tough questions for Mr. Gray, because "this is the first time that the Judiciary Committee has had a whack at the F.B.I. and I think they're going to pull their beard a little."